

ARKANSAS COURT OF APPEALS

DIVISION II

No. CA08-1304

MELVIN SAMS,

APPELLANT

V.

CRABTREE RV CENTER, INC., AIG
CLAIM SERVICES, SECOND INJURY
FUND, and DEATH & PERMANENT
TOTAL DISABILITY TRUST FUND,
APPELLEES

Opinion Delivered 29 APRIL 2009

AN APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION, [NO. F409140,
F509580 & F611070]

AFFIRMED

D.P. MARSHALL JR., Judge

Melvin Sams sustained a compensable injury to his back when he fell at work in April 2004. He fell two more times at work in July 2004. His employer, Crabtree RV Center, paid him temporary total disability benefits through January 7, 2005 and medical benefits through May 19, 2005. Sams then sought further medical benefits, additional TTD benefits, and a permanent impairment rating. The ALJ granted Sams's request, but the Commission reversed the ALJ's decision. Sams appeals, arguing that the Commission's decision, denying his claim in total, was not supported by substantial evidence.

We view the facts in the light most favorable to the Commission's decision. *Miner v. Yellow Transp., Inc.*, ___ Ark. App. ___, ___, ___ S.W.3d ___, ___ (18

March 2009). We affirm if the Commission's decision displays a substantial basis for denial of relief. *Ibid.* Determining the witnesses' credibility, weighing the evidence, and resolving conflicts in the evidence is the Commission's job. *Enterprise Products Co. v. Leach*, ___ Ark. App. ___, ___, ___ S.W.3d ___, ___ (4 March 2009).

First, the additional medical benefits. "The employer shall promptly provide for an injured employee such medical . . . services . . . as may be reasonably necessary in connection with the injury received by the employee." Ark. Code Ann. § 11-9-508(a) (Supp. 2007). Sams had to prove by a preponderance of the evidence that the medical treatment he requested was reasonable, necessary, and connected to his work injury. *Goyne v. Crabtree Contracting Co., Inc.*, ___ Ark. App. ___, ___, ___ S.W.3d ___, ___ (18 March 2009). It was a fact question for the Commission whether the additional medical treatment requested by Sams was reasonably necessary. *Ibid.*

Here, the Commission gave great weight to the opinion of Dr. Standefer. In October 2004, Dr. Standefer, a neurosurgeon, began treating Sams. On the first visit, he noted that "[i]n talking with the patient, it certainly sounds as though his job related mishaps were sufficiently severe to account for his pain." Shortly thereafter, when asked whether Sams's injury related to the "mechanism of injury," meaning whether Sams's injury was work-related, Dr. Standefer replied "yes." But after performing further tests and comparing those tests to pre-injury tests, Dr. Standefer noted that

“there does not appear to be any significant change.” Dr. Standefer also said that he noticed bulging at two levels, but that “these are really not much different than that noted in the past.”

The next month, Sams started seeing Dr. Moffitt. Dr. Moffitt noted that Sams’s pain and symptoms suddenly worsened in early 2005. But instead of problems in his lower-left back, which was the site of his mid-2004 work injuries, he was now having significant problems in his lower-right back. In a May 2005 letter, Dr. Moffitt attributed these problems to canal stenosis. “When this occurred, I can’t say for sure.” He further noted that Sams had first noticed this worsening two weeks before his late March 2005 visit. Sams had not been working for Crabtree at the time. Finally, Dr. Moffitt concluded that “it is impossible for me to say the exact cause of the change.” In August 2005, Dr. Fox performed surgery to repair Sams’s right-side ruptured disc. In Dr. Fox’s notes, he never attributed Sams’s right-side ruptured disc to the workplace incidents.

Viewing all this evidence in the light most favorable to the Commission’s decision, substantial evidence supports the Commission’s conclusion that Sams’s August 2005 surgery was not reasonably necessary in connection with his mid-2004 work injuries. *Goyne, supra*.

Next, the TTD benefits. To receive these benefits, Sams had to prove by a preponderance of the evidence that he was within his healing period and that he was

totally incapacitated from earning wages. *Vaughan v. APS Services, LLC*, 99 Ark. App. 267, 268, 259 S.W.3d 470, 470 (2007). On this issue, the Commission chose to believe the testimony of Kelly Kimes, Crabtree's business manager, rather than Sams's own testimony. Dr. Moffitt released Sams to return to work on November 12, 2004 with certain restrictions. Kimes testified that Crabtree provided Sams a job within those restrictions and abided faithfully by them. She said that, in early January 2005, Sams came into the office and said that he was quitting because he felt that he could not do the work assigned to him. She said that Sams was not fired, but quit. Even though Sams testified that he was routinely asked to do tasks outside his restrictions, it was for the Commission to weigh these competing accounts and to judge both Kimes's and Sams's credibility. Substantial evidence supported the Commission's decision that, because Sams did not prove that he was totally incapacitated from earning wages, he was not entitled to further TTD benefits.

Last, the permanent impairment rating. "Permanent benefits shall be awarded only upon a determination that the compensable injury was the major cause of the disability or impairment." Ark. Code Ann. § 11-9-102(4)(F)(ii)(a) (Supp. 2007). In a letter to Sams's lawyer in January 2007, Dr. Moffitt first assigned Sams a five-percent whole-person impairment rating. About three months later, after further letters, he increased Sams's whole-person impairment rating to fifteen percent. The Commission relied on two findings in denying Sams's claim here: (1) Sams did not sustain a herniated disc as a result of his mid-2004 injury; and (2) Sams's surgery, performed by

Dr. Fox in 2005, was not reasonably necessary in connection with his work-related injury.

Substantial evidence supports these findings. The report from Sams's initial MRI, performed in August 2004, said that there was "a circumferential disk bulge with a central disk protrusion and an annular tear" at the L4-5 level. But when Dr. Standefer began treating Sams in October 2004, he initially diagnosed Sams with "[m]ultilevel degenerative disc disease with attendant disc bulging at . . . L4-5," and ordered further tests. Sams underwent a myelogram. In comparing similar pre-injury tests and the post-injury tests, Dr. Standefer did not notice any significant changes. Further, Dr. Moffitt concluded that most of Sams's back issues were muscular in nature. He diagnosed Sams as having "lumbar strain superimposed on degenerative disc disease and status post laminectomy." Also, when Sams's condition got worse in early 2005, neither Dr. Moffitt nor Dr. Fox connected Sams's sudden deterioration or his need for surgery on his right-side to the original work-related incident. Dr. Moffitt testified that Sams's March 2005 worsening was a new finding and that the worsening was the cause of his need for surgery. Thus, the Commission's finding that Sams failed to prove that his 2004 injury was the major cause of his impairment was supported by substantial evidence.

Affirmed.

VAUGHT, C.J., and BAKER, J., agree.